IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.147 OF 1995

1. Dinkar Devidas Thite]
Aged 28 years,]
]
2. Devidas @ Deu Sukhadeo]
Thite, Aged 53 years,]
]
3. Sau.Mhankabai Devidas]
Thite, Aged 41 years]
All resident of]
Nalbandwadi, Taluka]
Mahol, Dist.Solapur]..Appellants

Vs.

The State of Maharashtra]
(To be served through the]
learned Public Prosecutor,]
High Court, Appellate Side,]
Bombay.)]..Respondent

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Mr.Umesh Mankapure with Mr.R.V.More Advocates for the Appellants
Mr.B.R.Patil, A.P.P. for the State.

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 6/7,2004

ORAL JUDGMENT:

1. Through this appeal, the appellants no.1 to 3-original accused nos.1 to 3 challenge the judgment and order dated 30th March, 1995, passed by the learned Additional Sessions Judge, Solapur in Sessions Case No.308 of 1993. By the said judgment

and order, the learned Additional Sessions Judge convicted all the three appellants for the offence under Sections 498-A and 304-B of IPC. For the offence under Section 498-A of IPC, each of the appellant has been sentenced to R.I. for three years and to pay a fine of Rs.2,000/- in default R.I. for nine months. For the offence under Section 304-B of IPC, each of the appellants has been sentenced to R.I. for seven years and fine of Rs.3,000/- in default R.I. for two years each.

2. Briefly stated the prosecution case is as under:

. Appellant no.1 Dinkar Devidas Thite is the son of appellant no.2 Devidas @ Deu Sukhadeo Thite and appellant no.3 Smt.Mhankabai Devidas Thite. Deceased Mainabai was married to appellant no.1 Dinkar on 26th March, 1989. The dowry was fixed at Rs.6,000/- in cash and half tola gold ring and two dresses. After the marriage, Mainabai went to reside with the appellants at Nalbandwadi, Solapur. For about one year, she was treated well. Thereafter, Mainabai conceived for the first time. At that time, the appellant no.1 Dinker-her husband, insisted that during the conception ceremony i.e. ‘Dohal-Jevan’ the father of Mainabai i.e. Rau Narsu Bhosale (complainant) should bring

with him half tola gold ring and dresses for his parents and sister. As the financial condition of the complainant was not good, the complainant could not comply with the said demand. Thereafter, Mainabai was reached to the house of parents for delivery. Mainabai told her father that on account of his failure to comply with the demand of her husband at the time of conception ceremony, her husband was annoyed. Hence, Mainabai was beaten and abused. Thereafter, Mainabai delivered a daughter. Complainant sent his son P.W.6 Baburao Bhosale to invite the accused for naming ceremony. Accordingly, P.W.6 Baburao went to Nalbandwadi and invited them. Appellant no.1 Dinkar agreed to come for the naming ceremony provided that half tola gold ring would be given to him at the time of naming ceremony as the complainant had already failed to give gold ring at the time of conception ceremony. The accused did not attend the naming ceremony. On the next day, appellant no.1 Dinkar went to the house of complainant and insisted that Mainabai should be sent with him. He also started abusing Mainabai. Thereafter, complainant Rau Bhosale sent Mainabai along with P.W.6 Baburao to the house of appellant no.1 Dinkar. Appellant no.1 Dinkar did not allow Mainabai to enter his house. Hence, they all returned back. On returning back, Baburao told

the complainant that appellant no.1 Dinkar did not accept the dress and asked them to return along with Mainabai as they had not brought half tola gold ring and he insisted that they should bring gold ring. He further informed the complainant that he as well as Mainabai were beaten. Mainabai resided with her parents for about one month thereafter. Thereafter, the appellant no.1 Dinkar came to fetch Mainabai. They sent Mainabai along with appellant no.1 Dinkar after giving him the gold ring and clothes. Mainabai resided in her matrimonial house for about one and half year. During this period of one and half year, on one or two occasions, she visited her father's house. During these visits, she told her father that she was being beaten.

. Thereafter, Mainabai came to their house for second delivery. After the delivery, no one attended the naming ceremony. However, appellant no.2 came to take her back. Mainabai resided with her husband for about four months thereafter. One fine morning Mainabai came to the house of complainant. She told him that she was being beaten and she was not given food. She further told complainant that she came to his house as there was danger to her life. Mainabai resided with him for about 4-5 months. Thereafter, appellant no.1 Dinkar

and appellant no.2 came to fetch her. However, complainant refused to send his daughter Mainabai with them on the ground that Mainabai will be illtreated. The complainant insisted that they should bring 4-5 persons from their village and meeting should be held. Accordingly, a meeting was held. P.W.5 Ramchandra Lokhande was one of the persons present during the said meeting. During the said meeting, the appellant nos.1 and 2 agreed to treat Mainabai well in future. Thereafter, Mainabai was sent with them.

. The marriage of Baliram i.e. brother of Mainabai came to be settled. As Mainabai did not attend the marriage, a person was sent to bring Mainabai. Appellant no.1 Dinkar followed them to the marriage. However, he left as half tola gold ring and dresses were not given to him. Mainabai was sent back to her matrimonial house with Maruti on the very day of the marriage. While returning, Mainabai told Maruti that there is no guarantee of her life due to failure on the part of maternal side to give the gold ring and clothes to the appellant no.1 Dinkar in the marriage of Baliram.

3. Sometime thereafter, complainant was informed that Mainabai died after consuming poison.

Thereafter complainant and his wife and his sons went to village Nalbandwadi. They saw dead body of Mainabai resting against the wall of the cattle-shed in a sitting position. They smelt poisonous substance. Arrangement of cremation was already made. However, the complainant and others from his side objected to the cremation on the ground that either poison was consumed by Mainabai or it was administered to her. Ultimately, police came there at about 8 to 9 p.m. and they took dead body of Mainabai. The body was sent for post mortem. The complaint (Exhibit 35) of P.W.7 Rau Bhosale i.e. father of deceased Mainabai came to be recorded. After the dead body was sent for post mortem, the probable cause of death was given as 'due to organo-phosphorous like poisoning leading to shock and death'. However, the viscera was preserved for chemical analysis. The viscera report (Exhibit-42) shows that 'organo-phosphorus insecticide Dimethoate i.e. Rogor' was found. After completion of investigation, the charge-sheet came to be filed.

4. In due course the case was committed to the Court of Sessions for trial. The charge was framed against the appellants-accused under Sections 498-A read with section 34, 306 read with Section 34 and 304-B read with of IPC. The accused pleaded not

guilty and claimed to be tried. The defence of the accused is that of total denial.

5. During the trial, in all, the prosecution has examined ten witnesses. Out of the said witnesses, P.W.7 Complainant Rau Bhosale i.e. father of deceased Mainabai is the star witness. After going through the evidence adduced by the prosecution, the learned Judge convicted the appellants under Sections 304-B and 498-A of IPC and imposed the sentence as stated in para no.1 of this judgment. Hence, this appeal.

6. I have heard Mr.Umesh Mankapure, the learned advocate appearing for the appellants and Mr.B.R.Patil, the learned Public Prosecutor for the State. I have also perused the entire material on record. After utmost circumspection, I have reached the conclusion that this appeal deserves to be partly allowed.

7. The star witness in the present case is the complainant P.W.7 Rau Bhosale. P.W.7 Rau Bhosale is the father of deceased Mainabai. Rau Bhosale has stated that his daughter Mainabai was married to Dinkar in 1989. During the marriage, it was agreed that 6000 rupees in cash and half tola gold ring and

two dresses would be given to appellant Dinkar by way of dowry. After the marriage, Mainabai went to reside with Dinkar. Thereafter, she conceived. At that time, appellant Dinkar told them that they should bring half tola gold ring and dresses for his parents while coming for the conception ceremony ‘Dohal-Jevan’. As the financial condition of the complainant was not good, they did not take the above presents. Thereafter, Mainabai was reached to the house of complainant for the purpose of delivery. At that time, Mainabai told them that they should be prepared for half tola gold ring for appellant Dinkar and dresses for his parents and sister on the occasion of naming ceremony as they had failed to give said presents at the time of conception ceremony. Thereafter, Mainabai delivered a daughter. P.W.6 Baburao i.e. the son of Rau Bhosale, went to the matrimonial house of Mainabai to invite everyone for naming ceremony. At that time, the appellant Dinkar told Baburao that they will attend the naming ceremony only when half tola gold ring to him and dresses to his parents and sister are given to him. Nobody from the side of the accused attended the naming ceremony. On the next day, the appellant came in the morning and he started abusing the complainant and Mainabai and he insisted that Mainabai should be sent with him

immediately. When they reached the house of appellant Dinkar started beating Mainabai and did not allow her in the house unless above mentioned presents were brought by her. Baburao who was accompanying them, tried to intervene but he was also beaten by the appellant Dinkar. Hence, Baburao and Mainabai returned back to the house of complainant. Mainabai resided with them for one month and thereafter, the appellant came to fetch her and then they sent Mainabai with Dinkar with gold ring and clothes.

8. During the next one and half year, whenever Mainabai came to the house of the complainant, she told that she was being beaten. Thereafter, the appellant no.2 reached Mainabai to their house for second delivery. Mainabai told that accused beat her. She was weeping and saying that there is danger to her life. She resided with them for 4-5 months. Thereafter, the appellant nos.1 and 2 came to take Mainabai back. However, the complainant insisted that they should bring 4-5 persons there of their village. Accordingly, a meeting was held and in the said meeting the accused agreed not to illtreat Mainabai.

. The complainant Rau Bhosale has further stated

that thereafter the marriage of Baliram was settled. As Mainabai did not attend the marriage, he sent Maruti Shrikhande to bring her. Thereafter, appellant Dinkar followed them, however, he left as half tola gold ring and dresses were not given to him. Thereafter, the complainant sent Maruti Shrikhande along with Mainabai on the very same day back to her matrimonial house. Thereafter, the complainant was informed that Mainabai died after consuming poison. Thereafter, he went to the village of appellant no.1 Dinkar and he lodged his complaint. It is seen that nothing has been elicited in the cross examination of this witness so as to discredit his testimony. However, the testimony of this witness shows that all throughout the demand has been made only by appellant Dinkar and not by any of other two appellants. From the evidence of this witness, it is seen that it was appellant Dinkar who demanded gold ring, it was he who abused and beat Mainabai and it was he who refused to take her in his house as his demand was not met. There is one solitary statement in the evidence of this witness Rau that all the accused beat and abused Mainabai, however, no particulars have been given as to the reason for doing so nor the date and time when said beating or abusing had approximately occurred. As stated earlier, on going

through the evidence of Rau, it is seen that all the allegations are against appellant Dinkar only.

9. The prosecution has also examined P.W.6 Baburao Bhosale who is the brother of Mainabai. Baburao Bhosale has stated that Mainabai was married with the appellant on 23.6.1989. They gave dowry amount of Rs.6,000/- and half tola gold ring and two dresses to the appellant Dinkar in the marriage. Thereafter, Mainabai went to reside in her matrimonial house. He has stated that thereafter Mainabai conceived and appellant Dinkar gave message that they should come with half tola gold ring and dresses for all members of his family for conception ceremony (Dohal-Jevan). However, as their financial condition was not sound, they could not give the said presents. After delivery, appellant Dinkar told Baburao that he will come for the naming ceremony provided half tola gold ring and dresses were given to him. Baburao has stated that on the next day of naming ceremony, appellant Dinkar abused Mainabai and stated that she should accompany him at that very time. Accordingly, Mainabai, Baburao and others left along with appellant Dinkar. When they reached house of appellant Dinkar, appellant Dinkar did not allow Mainabai into his house on the ground that she did not bring half tola gold ring and

dresses and the presents for his parents and sister and appellant Dinkar started beating Mainabai. When this witness tried to intervene, appellant Dinkar beat him also. Thereafter, Mainabai was taken back to the house of her parents where she resided for one month. Thereafter, appellant Dinkar came to fetch her and they sent Mainabai along with Dinkar with half tola gold ring and dresses for the appellant. On reading the evidence of this witness also, it is seen that all the instances of demand, illtreatment and cruelty are attributed only to appellant Dinkar. In respect of appellant Dinkar, nothing has been brought out in the cross-examination of this witness so as to disbelieve his testimony. The prosecution has also examined P.W.1 Maruti Shrikhande who is the maternal uncle of Mainabai and P.W.2 Mahadeo Bhosale who is the cousin brother of Mainabai. The evidence of these witnesses is also on the similar lines of P.W.6 Baburao Bhosale.

10. Looking to the evidence of these witnesses, I am of the opinion that the learned Sessions Judge was right in convicting the appellant Dinkar for the offence under Section 498-A of IPC. However, looking to the evidence on record, the conviction of the appellant nos.2 and 3 is not called for. There are no specific allegations against any of these two

appellants. There is no evidence to show that appellant nos.2 and 3 had made any demand at any point of time. Moreover, no specific instances of appellant nos.2 or 3 beating or abusing Mainabai, have been stated by any of the witnesses. In this view of the matter, the conviction of the appellant nos.2 and 3 under Section 304-B as well as Section 498-A of IPC deserves to be set aside.

11. In respect of conviction of appellant Dinkar under Section 304-B of IPC, the learned advocate for the appellants has submitted that no offence under Section 304-B of IPC, can be said to have been made out as in the present case, there is no material on record to show that ‘soon before’ her death Mainabai was subjected to cruelty or harassment by appellant Dinkar for or in connection with any demand for dowry. He has further submitted that the first incident of demand took place during the first pregnancy of Mainabai. In relation to their demand, there was illtreatment, harassment and beating at the hands of appellant Dinkar to Mainabai. However, thereafter, there is no material to show that there was any demand of dowry, illtreatment or harassment to Mainabai till Mainabai’s brother’s marriage. On the day of the marriage of the brother of Mainabai, appellant Dinkar had acted in the manner which would

constitute cruelty in respect of Mainabai. However, it is further submitted that the said marriage also took place many months prior to the date of the incident. Thus, he has submitted that there is no material to show in the present case that soon before the incident, she was subjected to cruelty for or in connection with dowry. In such case, offence would not be covered by Section 304-B of IPC. Looking to the evidence on record, there appears to be considerable merit in this submission. However, in the present case, the lesser charge under Section 306 of IPC has also been framed against appellant Dinkar and others. They have led their defence in respect of the said charge and the evidence on record does show that the case would be covered under Section 306 of IPC. The term 'soon before' as envisaged in Section 304-B does not appear in Section 306 of IPC. A useful reference in this respect, can be made to the decision of the Apex Court in the case of **K. Prem S.Rao and Anr. Vs. Yadla Srinivasa Rao & Ors. reported in (2003) 1 SCC 217.** In the said decision, it has been held that in case of omission or defect in framing the charge, the accused may still be convicted for offence actually committed and proved on basis of evidence on record, so long as accused has not been misled by any error or omission in framing the

charge and no failure of justice has been occasioned. In the case of **K.Prem S.Rao (supra),** the charge was framed under Section 304-B and 498-A of IPC. However, the accused came to be convicted under Section 306 and 498-A of IPC. The Supreme Court held that on the same facts and evidence on which the accused was charged under Sections 498-A and 304-B the accused can be convicted and sentenced under Section 306 of IPC. It was further held that the accused had enough opportunity for his defence. The charge framed under Section 304-B and Section 498-A of IPC has been reproduced in the said judgment. On reading the said charge, it is clear that though Section 306 was not specifically mentioned in the charge all the facts and ingredients of the offence under Section 306 of iPC existed in the charge. In such circumstances, it was held that the mere omission on the part of the trial Judge to mention Section 306 does not preclude the court from convicting the accused for the said offence when found proved. In the present case it is seen that the charge was also framed for the offence under Section 306 of IPC and the fullest opportunity was given to the accused to put their defences and cross-examine the prosecution witnesses with respect to charge under Section 306 of IPC. Thus, there is no prejudice to the accused.

. In the present case, marriage of Mainabai with appellant Dinkar took place on 23rd June, 1989. Mainabai committed suicide by consuming insecticide on 2nd September, 1993 i.e. well within the period of seven years of her marriage. In such case, the presumption under Section 113-A of the Evidence Act, is liable to be raised against the appellant Dinkar. For raising such presumption under Section 113-A, two criteria have to be satisfied; i.e. (1) it should be shown that the married women had committed suicide within a period of seven years from the date of her marriage and (2) her husband had subjected her to cruelty. After both criteria are satisfied, a presumption is liable to be raised by the Court that suicide had been abetted by her husband. In the present case, from the evidence of P.W.1 Maruti Shrikhande, P.W.2 Mahadeo Bhosale, P.W.6 Baburao Bhosale and the evidence of the complainant P.W.7 Rau Bhosale, there is enough material to show that the appellant Dinkar subjected Mainabai to cruelty. From the material on record, it has also been clearly shown by the prosecution that Mainabai had committed suicide. In such case, a presumption under Section 113-A of the Evidence Act, is liable to be invoked against appellant Dinkar.

. On the point of Mainabai committing suicide, it is pertinent to note that cause of death is not disputed on behalf of appellants-accused. As per the post-mortem notes (Exhibit-12) and the C.A.Report (Exhibit-42), 'organo phosphorus insecticide Dimethoate i.e. Rogor' was found. The quantity of poison found in the body of Mainabai constituted a fatal dose. The quantity of poison found in the body of Mainabai, was not such as it could have been accidentally consumed. Hence, there is no possibility of accidental death. In the present case, only two possibilities arise i.e. homicidal death by forcing Mainabai to consume poison or that Mainabai herself consumed poison and committed suicide. It is not the prosecution case that it is a case of homicidal death. The aspect discussed above and the other material on record in this case, clearly points out a case of suicidal death. Looking to all these facts, in my view, an offence under Section 306 of IPC is clearly made out against the appellant Dinkar.

12. In view of the above, the conviction and sentence of all the three appellants for the offence under Sections 304-B is set aside. All the three appellants are acquitted thereunder. Fine amount if any, paid by the appellants under the said offence,

be refunded to them. Further the conviction and sentence of the appellant no.2 Devidas @ Deu Sukhadeo Thite and appellant no.3 Mhankabai Devidas Thite for the offence under Section 498-A of IPC is set aside. The appellant nos.2 and 3 are acquitted thereunder. Fine amount if any paid by the appellants nos.2 and 3 under the said offence, be refunded to them. The appellant nos.2 and 3 are on bail. Their bail bonds shall stand cancelled. However, the conviction and sentence of the appellant no.1 Dinkar Thite for the offence under Section 498-A of IPC is confirmed. Further the appellant no.1 Dinkar Thite is convicted for the offence under Section 306 of IPC and he is sentenced to suffer R.I. for five years and to pay a fine of Rs.5,000/- in default R.I. for two years. Rest of the judgment and order in respect of muddemal property, is maintained. The appellant no.1 Dinkar is on bail. He shall surrender within eight weeks from today to undergo his sentence.

. Appeal is partly allowed in the above terms.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.147 OF 1995
(Dinkar Devidas Thite & Anr. Vs. The State of Maharashtra)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Umesh Mankapure with Mr.R.V.More
Advocates for Appellants
Shri.B.R.Patil, P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 6/7, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The conviction and sentence of all the three appellants for the offence under Sections 304-B is set aside. All the three appellants are acquitted thereunder. Fine amount if any, paid by the appellants under the said offence, be refunded to them. Further the conviction and sentence of the appellant no.2 Devidas @ Deu Sukhadeo Thite and appellant no.3 Mhankabai Devidas Thite for the offence under Section 498-A of IPC is set aside. The appellant nos.2 and 3 are acquitted thereunder. Fine amount if any paid by the appellants nos.2 and 3 under the said offence, be refunded to them. The appellant nos.2 and 3 are on bail. Their bail bonds shall stand cancelled. However, the conviction and sentence of the appellant no.1 Dinkar Thite for the offence under Section 498-A of IPC is confirmed. Further the appellant no.1 Dinkar Thite is convicted for

the offence under Section 306 of IPC and he is sentenced to suffer R.I. for five years and to pay a fine of Rs.5,000/- in default R.I. for two years. Rest of the judgment and order in respect of muddemal property, is maintained. The appellant no.1 Dinkar is on bail. He shall surrender within eight weeks from today to undergo his sentence.

. Appeal is partly allowed in the above terms.

(V.K.TAHILRAMANI,J.)